

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK
(Albany Division)

HEARING DATE: September 7, 2011
HEARING TIME: 9:15 am
HEARING PLACE: Albany, NY

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In re:

Derek Lemarr Bolden,

Case No. 11-11906
(Chapter 7)

Debtor.
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**MOTION FOR AN ORDER DISMISSING THE CASE,
OR ALTERNATIVELY,
FOR ENTRY OF A JUDGMENT DENYING DISCHARGE**

**TO HONORABLE ROBERT E. LITTLEFIELD, JR., CHIEF UNITED STATES
BANKRUPTCY JUDGE:**

The United States Trustee for Region 2 moves this Court for entry of a judgment, pursuant to 11 U.S.C. §§ 727(a)(8), denying the debtor a discharge, or alternatively, dismissing the case under 11 U.S.C. § 707(a) based upon the absence of a bankruptcy purpose of the case due to the debtor's inability to obtain a discharge, and such other and further relief as the Court may deem just and proper.

I. Introduction

In this motion, the United States Trustee seeks the denial of the debtor's discharge under 11 U.S.C. § 727(a)(8) based upon a previously filed bankruptcy case in which was issued a discharge, that was commenced less than eight years prior to the filing of the current case, and the statutory prohibition against receipt of multiple discharges in cases filed during the same eight year period. Since under the circumstances of this case, there appears to be no bankruptcy purpose to this case in view of the debtor's inability to receive a discharge, the United States Trustee seeks the alternative relief of the dismissal of the case pursuant to 11 U.S.C. § 707(a).

II. Jurisdictional Statement

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1409. This motion arises in a case under Title 11 of the United States Code and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). This is a contested matter under Federal Rule of Bankruptcy Procedure 9014(a)¹.

III. Statement of Facts

2. Derek Lemarr Bolden (hereafter "debtor") filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code (the "petition" or "current petition") on June 14, 2011 (the "filing date") in the United States Bankruptcy Court for the Northern District of New York (Albany Division).

3. The debtor filed schedules of assets and liabilities and a statement of financial affairs (collectively "the schedules"), which were verified by the debtor under penalty of perjury.

4. In the section of the schedules requiring a disclosure of any prior bankruptcy cases filed within the preceding eight years, the section reflects Case Number 05-14755 filed in the Northern District of New York .

5. On July 8, 2005, debtor Derek Lemarr Bolden commenced a case ("the prior case" or "prior bankruptcy case") by filing a voluntary petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of New York (Albany Division) which was assigned Case No. 05-14755. Upon information and belief, it is the same person as both cases were filed using the same social security number.

¹An objection to discharge under 11 U.S.C. § 727(a)(8) previously required an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(4). The rule was amended to delete that requirement on April 28, 2010, effective December 1, 2010.

6. On November 1, 2005, the United States Bankruptcy Court entered an order discharging the debtor, Derek Lemarr Bolden, from all dischargeable debts in the prior case.

7. The prior case of Derek Lemarr Bolden was closed by the entry of a final decree on December 7, 2005.

8. The first date set for a meeting of creditors pursuant to 11 U.S.C. § 341(a) in the current Chapter 7 case was July 8, 2011. The last day to timely object to discharge is accordingly September 6, 2011. This action is timely.

9. The period of time between the filing date of the prior bankruptcy case filed by the debtor and the filing date of the current petition is less than eight years.

10. Upon information and belief, the debtor is not an infant, or incompetent. In addition, the undersigned caused a search to be made of the information data banks of the Department of Defense Manpower Data Center (the “DMDC”), which indicated that the DMDC does not possess any information indicating that the Debtor is currently on active duty in military service.

IV. Argument

A. Cause exists to deny the debtor a discharge.

11. The debtor’s receipt of a discharge under 11 U.S.C. § 727 in a case commenced within eight years before the filing of the petition constitutes cause to deny the debtor a discharge in this case pursuant to 11 U.S.C. § 727(a)(8).

B. Alternatively, the Court should dismiss the case.

12. Since 11 U.S.C. § 727(a)(8) precludes the debtor from receiving a discharge in a case commenced within the eight year period preceding the filing of the current case, under the

circumstances presented here, there is no bankruptcy purpose, and the Court should consider the alternative relief of dismissal of the current case pursuant to 11 U.S.C. § 707(a).

V. Conclusion

13. For the reasons set forth above, the United States Trustee submits that cause exists for the entry of a judgment denying the debtor a discharge pursuant to 11 U.S.C. § 727(a)(8), or alternatively, dismissing the Chapter 7 case pursuant to 11 U.S.C. § 707(a).

WHEREFORE, the Office of The United States Trustee respectfully requests the entry of a judgment, pursuant to 11 U.S.C. § 727(a)(8), denying the debtor, Derek Lemarr Bolden, a discharge, or alternatively, an order dismissing the Chapter 7 case of Derek Lemarr Bolden and such other and further relief as may seem just and proper.

Dated: Albany, New York
August 8, 2011

Respectfully submitted,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE
REGION 2

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